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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KAVEH BASTANI OSKOU,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-73068

Agency No. A78-051-493

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Kaveh Bastani Oskoui, a native and citizen of Iran, petitions for review of the decision of the Board of Immigration Appeals (“BIA”) affirming, without opinion, an immigration judge’s (“IJ”) decision denying his applications for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

asylum, withholding of deportation, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review the IJ’s decision for substantial evidence. *Nahrvani v. Gonzales*, 399 F.3d 1148, 1151 (9th Cir. 2005). We deny the petition for review in part, grant it in part, and remand.

An application for asylum must be denied if the alien has firmly resettled in another country. *See* 8 U.S.C. § 1158(b)(2)(A)(vi). Substantial evidence supports the presumption that Oskoui was firmly resettled in Germany, where he lived for 19 years before entering the United States. *See Cheo v. INS*, 162 F.3d 1227, 1229-30 (9th Cir. 1998). Oskoui failed to rebut this presumption because he conceded that he could have renewed his status and applied for permanent residence in Germany. *See id.* at 1230 (“[W]here the duration and circumstances indicate that the asylum seeker may remain in the third country, then it is incumbent upon him to show the contrary.”). Oskoui also failed to show that the “conditions of his . . . residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he . . . was not in fact resettled.” 8 C.F.R. § 1208.15(b). Oskoui may not overcome a finding of firm resettlement by showing that he is now unable to renew his previous status in Germany. *See Vang v. INS*, 146 F.3d 1114, 1117 (9th Cir. 1998).

We reject the government's contention that Oskoui failed to exhaust his withholding and CAT claims because his brief before the BIA specifically challenged the IJ's findings with respect to those claims. We agree with Oskoui that the IJ failed to consider the persecution Oskoui might face in Iran as a Muslim who has converted to Christianity and is therefore subject to severe punishment for apostasy. We therefore remand for further proceedings on Oskoui's withholding and CAT claims.

**PETITION FOR REVIEW DENIED in part, GRANTED in part;
REMANDED**